



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA-2007-27748]

RIN 2126-AB66

Minimum Training Requirements for Entry-Level Commercial Drivers' License

Applicants; Consideration of Negotiated Rulemaking Process

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent.

SUMMARY: FMCSA announces that the Agency is exploring the feasibility of conducting a negotiated rulemaking (Reg Neg) concerning entry-level training for drivers of commercial motor vehicles (CMVs). Specifically, the Agency is exploring a Reg Neg to implement the entry-level driver training (ELDT) provisions in the Moving Ahead for Progress in the 21st Century Act (MAP-21). The FMCSA has hired a convener to speak with interested parties about the feasibility of conducting of an ELDT Reg Neg. FMCSA anticipates that these interested parties may include driver organizations, CMV training organizations, motor carriers (of property and passengers) and industry associations, State licensing agencies, State enforcement agencies, labor unions, safety advocacy groups, and insurance companies.

DATES: Please submit your comments no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number FMCSA-2007-27748 using any one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Fax: 202-493-2251.
- Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or e-mail Mr. Richard Clemente, Transportation Specialist, FMCSA, Office of Bus and Truck Standards and Operations, 202 366-4325, mcpsd@dot.gov. If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, 202-366-3024, Barbara.Hairston@dot.gov.

SUPPLEMENTARY INFORMATION: In the early 1980s, the Federal Highway Administration's (FHWA) Office of Motor Carriers, predecessor agency to the FMCSA, determined that there was a need for technical guidance in the area of truck driver training. Research showed that few driver training institutions offered a structured curriculum or a standardized training program for any type of CMV driver. A 1995 study entitled "Assessing the Adequacy of Commercial Motor Vehicle Driver Training" (the Adequacy Report) concluded, among other things, that effective ELDT needs to include behind-the-wheel (BTW) instruction on how to operate a heavy vehicle.

In 2004, FMCSA implemented a driver training rule that focused on areas unrelated to the hands-on operation of a CMV, relying instead on the commercial driver's license (CDL) knowledge and skills tests to encourage training in the operation of CMVs. These current training regulations in 49 CFR Part 380, subpart E cover four areas: (1) driver qualifications; (2) hours of service limitations; (3) wellness; and (4) whistleblower protection. In 2005, the U.S. Court of Appeals for the District of Columbia Circuit (the Court) remanded the rule to the Agency for further consideration because the Court found that the decision to issue a rule that did not mandate behind the wheel training was not supported by the documentation in the rulemaking record – the final rule ignored the BTW training component covered by the 1995 Adequacy Report. Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Admin., 429 F.3d 1136, 1152 (D.C. Cir. 2005).

On December 26, 2007, FMCSA published a Notice of Proposed Rulemaking (NPRM) seeking public comment on enhanced ELDT requirements (72 FR 73226). The proposed rule would have applied to drivers who apply for a CDL beginning 3 years after a final rule went into effect. Following that date, persons applying for new or upgraded CDLs would have been required to successfully complete specified minimum classroom and BTW training from an accredited institution or program. The Agency proposed that the State driver-licensing agency issue a CDL only if the applicant presented a valid driver training certificate from an accredited institution or program.

Following publication of the NPRM, the Agency reviewed the public responses to the proposal. Additionally, FMCSA held ELDT listening sessions on January 7, 2013 (ABA Marketplace), and March 22, 2013 (Mid-America Trucking Show). Finally, the Agency tasked its Motor Carrier Safety Advisory Committee (MCSAC) to provide ideas the Agency should consider in implementing the MAP-21 requirements. Based on the feedback received during the listening session and in light of the new requirements imposed by MAP-21, the Agency withdrew the 2007 NPRM on September 19, 2013 (78 FR 57585). Copies of the transcripts from the listening sessions and the MCSAC's report are included in the docket referenced at the beginning of this document.

FMCSA is now assessing the feasibility of using Reg Neg for this rulemaking. In a Reg Neg, an agency invites representatives of interested parties that are likely to be affected by a regulation to work with each other and the agency on a negotiating committee to develop a consensus draft of a proposed rule. If a consensus is reached, the Agency would then publish the proposal for public comment under customary regulatory procedures. FMCSA believes this cooperative problem-solving approach should be given serious consideration. To do so, the Agency must determine, among other statutory factors, whether an appropriate advisory committee can be assembled that would fairly represent all affected interests, will negotiate in good faith and whether consensus on the issues is likely.

FMCSA has retained a neutral convener, Mr. Richard Parker from the University of Connecticut, School of Law, to undertake the initial stage in the

Reg Neg process. Mr. Parker's credentials have been placed in docket FMCSA-2007-27748 for the public's convenience.

The neutral convener will interview affected interests, including but not limited to, CMV driver organizations, CMV training organizations, motor carriers (of property and passengers) and industry associations, State licensing agencies, State enforcement agencies, labor unions, safety advocacy groups, and insurance companies and associations. The convener will determine whether additional categories of interested parties may be necessary. The convenor will, among other things, examine the potential for adequate and balanced representation of these varied interests on an advisory committee that would be convened to negotiate the regulation. The convener will then submit a written "convening" report of findings and recommendations to the Agency, and the final report will be available to the public. The convener's report will provide a basis for FMCSA to decide whether to proceed with a Reg Neg, and, if so, to determine the scope of the issues the committee would address. In the alternative, FMCSA may decide to forgo the Reg Neg and proceed with traditional notice-and-comment rulemaking.

All interested parties are advised that the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. 574, will apply to the convener's activities. The Federal Government will make no claim to the convener's notes, memoranda, or recollections or to documents provided to the convener in confidence in the course of the convening process.

The convenor will not interpret FMCSA or DOT policy on behalf of the Agency or the Department nor make decisions on items of policy, regulation, or statute. The convenor will not take a stand on the merits of substantive items under discussion.

The FMCSA will provide the convener any comments it receives in reaction to this notice and will file the comments in docket FMCSA-2007-27748. If you want to submit comments to this notice directly to the docket, use the addresses above under the heading **ADDRESSES**.

Should the FMCSA decide to proceed with a Reg Neg process, the Agency will follow the procedures set forth in the Negotiated Rulemaking Act of 1996, 5 U.S.C. 561 *et seq.* This would include the mandatory publication of a notice of intent to solicit comment on membership and invite interested persons to apply for nomination to the committee. It also includes the establishment of a negotiating committee under the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Issued under the authority of delegation in 49 CFR 1.87.

Dated: August 12, 2014.

Anne S. Ferro,
Administrator.

[FR Doc. 2014-19637 Filed 08/15/2014 at 11:15 am; Publication Date: 08/19/2014]